

CLERK'S OFFICE, U.S. DIST. COURT  
AT CHARLOTTESVILLE, VA  
FILED

JAN 08 2021

JULIA C. DUDLEY, CLERK  
BY: [Signature] DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division

GREGORY CONTE AND WARREN  
BALOGH,

Plaintiffs,

v.

Civil Action No. 3:20-cv-00038

COMMONWEALTH OF VIRGINIA AND  
TERENCE R. MCAULIFFE AND VIRGINIA  
STATE POLICE AND STEVEN FLAHERTY  
AND BRIAN JOSEPH MORAN AND BECKY  
CRANNIS-CURL AND CITY OF  
CHARLOTTESVILLE AND MICHAEL  
SIGNER AND WES BELLAMY AND  
CHARLOTTESVILLE POLICE  
DEPARTMENT AND AL THOMAS, JR.,

Defendants.

**PLAINTIFFS' MOTION FOR THE RECUSAL OF JUDGE NORMAN MOON.**

COME NOW plaintiffs Conte and Balogh and move that Judge Norman Moon recuse himself from this action. Judge Moon has, in other cases related to Unite the Right, exhibited clear and consistent prejudice against litigants and defendants who have come before This Court. Under such circumstances, plaintiffs cannot reasonably expect to receive a fair adjudication of their claim.

In *Kessler v. City of Charlottesville*, Judge Moon failed to recuse himself, despite the fact that two of his clerks Joshua Lefebvre and Hutton Marshall were close friends of the plaintiffs, and Lefebvre have been a material witness to facts alleged (see Case 3:19-cv-00044-NKM-JCH, Document 55 "Motion for Recusal"). It was only after plaintiff Kessler published information about Marshall's and LeFebvre's potential conflicts that Judge Moon issued an order, removing the two compromised clerks from the case. However, he did not recuse himself from that case, nor did he reveal, or endeavor to discover, their obvious and dangerous conflict of interest *until* plaintiff Kessler brought it to the attention of the public--

and the court. Judge Moon's failure to recuse himself in that case was a clear violation of federal regulations, and judicial precedent.<sup>1</sup>

Plaintiffs have already raised this issue in our response to the Defendants' motions to dismiss regarding the proper venue for this case (cf. Document 35, "PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(b)(3) MOTIONS TO DISMISS OR TRANSFER VENUE"). Despite our objections, we have received no explanation for the decision to assign our case to Judge Moon's docket.

Public confidence in the integrity and impartiality of the judiciary involving a civil rights case with profound implications relating to the future duties and responsibilities of government officials in upholding the rights of political dissidents, demands the impartiality of an independent and honorable judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge and his assistants. The conduct of Judge Moon's court has created, in reasonable minds, a perception that the judge's ability to carry out judicial responsibilities with integrity and impartiality in this case is impaired. Behaving with impropriety or the appearance of impropriety in the professional and personal conduct of a judge and/or his assistants is prohibited. We therefore request that the Court decide the present motion prior to making any other decisions in this case and respectfully request that Judge Moon recuse himself or that our case be assigned to a different judge.

---

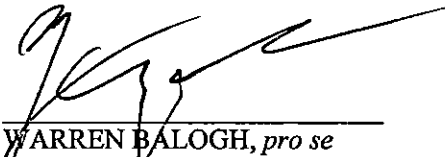
<sup>1</sup> See 28 U.S.C. § 455(a). **the judge of this Court should also be disqualified because he has at least a professional, and likely personal, relationship with political officials and social networks that could be substantially affected by the outcome of this case.** See *id.* at § 455(b)(4). Pursuant to 28 U.S.C. § 455(a), any judge or magistrate judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The standard under § 455(a) is not subjective; it requires the Court to ask "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990) (citation omitted). Thus, under § 455(a), "what matters is not the reality of bias or prejudice but its appearance," and "quite simply and quite universally, recusal [is] required whenever 'impartiality might reasonably be questioned.'" *Liteky v. United States*, 510 U.S. 540, 548 (1994) (citation omitted). Close questions as to the appearance of impropriety are to be decided in favor of recusal. See *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

Dated: January 7, 2021

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Gregory Conte', written over a horizontal line.

GREGORY CONTE, *pro se*  
P.O. Box 3874  
Gaithersburg, MD 20885

A handwritten signature in black ink, appearing to read 'Warren Balogh', written over a horizontal line.

WARREN BALOGH, *pro se*  
P.O. Box 6037  
Pittsburgh, PA 15211

C E R T I F I C A T E

I hereby certify that on the 7th of January 2021, I sent the foregoing to the Clerk of the Court by first class mail.

I hereby certify that I have mailed by United States Postal Service the document to the following:

Erin R. McNeill, Esq. (VSB No. 78816)  
Robert B. McEntee, III, Esq. (VSB No. 89390)  
Madeline M. Gibson, Esq. (VSB No. 87561)  
Office of the Virginia Attorney General  
202 North 9th Street  
Richmond, VA 23219

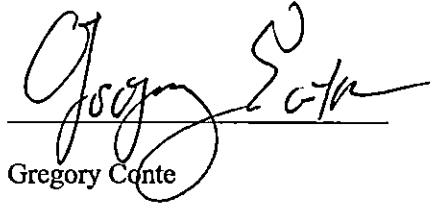
Richard H. Milnor, Esq. (VSB No. 14177)  
Zunka, Milnor & Carter, Ltd.  
414 Park Street  
Charlottesville, VA 22902

Rosalie Pemberton Fessier (VSB #39030)  
Brittany E. Shipley (VSB #93767)  
TimberlakeSmith  
25 North Central Avenue  
PO Box 108  
Staunton, VA 24402-0108

David P. Corrigan (VSB No. 26341)  
Melissa Y. York (VSB No. 77493)  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255

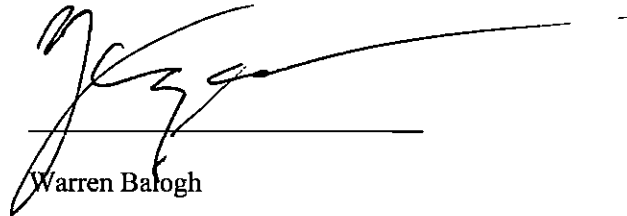
Dated January 7, 2021.

Respectfully Submitted,



Handwritten signature of Gregory Conte in black ink, written over a horizontal line.

Gregory Conte



Handwritten signature of Warren Balogh in black ink, written over a horizontal line.

Warren Balogh